IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6939 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VISHNUBHAI K PATEL & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
None for Petitioner(s) :
MR. LB DABHI, Ld.AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 08/02/2006

ORAL JUDGMENT

1. The petitioners have filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the action of the

respondent no.2 Board i.e. Gujarat Panchayat Service Selection Board in not publishing the marks of the candidates and the result of the candidates on the notice board, by issuing a suitable direction under Article 226 of the Constitution of India. The petitioners have also prayed for quashing and setting aside the action of the respondent no.2 Board in not preparing the select list/ waiting list as per the actual post available and requisition which the respondent no.2 Board has received at the time of preparing the list. The petitioners have also prayed for the direction to respondent no.2 to prepare the additional select list/ waiting list of 150 candidates or the number of actual posts in existence at the time of publishing the list. The petitioners have also prayed for the direction to respondent no.2-Board to immediately intimate the marks obtained by the petitioner nos.1 and 2 alongwith the mark of the last candidate mentioned at Annexure-A.

2. It is the case of the petitioners that the respondent no.2 had given advertisement for the

purpose of selecting employees for appointment in the panchayat service, which included the post of Block Extension Educator. In all, total 86 posts of Block Extension Educators were to be filled in as mentioned in the said advertisement. The last date for submitting the applications was 20.06.1988. On the basis of the said advertisement, petitioners had applied for the same and as per the Recruitment Rules for the post of Block Extension Educator, a candidate has to appear both in written examination as well as in oral test. Therefore, when the petitioners had applied on the basis of the advertisement, there were both written as well as oral examinations, which were required to be taken as per the Recruitment Rules. Accordingly, the petitioners had appeared for the written examination on 16.10.1988. The Government, vide Resolution dated 24.11.1988, had taken out the oral test and, therefore, selection was to be made only on the basis of the written examination, which had already been taken by the respondent. Therefore, the selection was to be made on the said post on the basis of the marks obtained in written

examination, as oral interview was subsequently done away with.

3. It is also the case of the petitioners that on the basis of the said written examination, respondent no.2 published a select list/ waiting list and the candidates whose numbers were mentioned in the said list and published in the newspaper, were accordingly declared as successful in the written examination. In the said publication, total 81 candidates were shown to have been included in the said select list/ waiting list. The said list has been prepared of 81 candidates, though as a matter of fact in the advertisement which was issued by the respondent no.2 Board, total number of vacancies shown were 86. The petitioners have therefore prayed for the aforesaid prayers i.e. for declaration of marks as well as preparation of waiting list on the grounds as stated in the petition.

4. Affidavit-in-reply is filed on behalf of the respondent wherein it is stated that none of the petitioners have any fundamental right for being

selected for the post of Block Extension Educator, merely because they have applied for the said post, and have appeared at competitive examination. It is further submitted that none of the petitioners belong to any of the community for which reservation was made for the appointment to the post of Block Extension Educator. It is further stated that the appointment to the post of Block Extension Educator was required to be made either by promotion or by direct selection. The direct selection was required to be made on the basis of qualifying the written examination held by the respondent no.2 Board. The said examination was to be conducted in accordance with Block Extension Educator (Panchayat Service, Recruitment) Examination Rules 1974. In accordance with the said Rule, an advertisement inviting applications for the direct selection for the post of Block Extension Educator was published by the respondent no.2 for 86 vacancies, of which 46 vacancies were required to be filled in by un-reserved category. Pursuant to the said advertisement all the four petitioners had made application in the required

form alongwith the instructions pertaining to the application and the examination to be held thereof. All the applicants were to attach the relevant certificates and documents, duly certified to be True Copy with the application form. It is further stated that the result of only those applicants was considered who were eligible for the said post, whose applications were complete in all respects. It was decided to select such applicants who had obtained more than 122 marks, out of total 200 marks. The result of the said examination was published on notice board of the respondent no.2 office on 15.08.1989 and on 18.08.1989 the result of those persons who were selected, was published in the newspaper. It was further stated that the petitioner no.1 had made an application for the issuance of mark-sheet, which was duly issued to him on 20.10.1989. Though he received mark-sheet, he had not disclosed the fact in the petition. It is further stated that the petitioner no.2 had also applied for issuance of mark-sheet. However, the petitioner no.2 had failed to submit the True Copy of all the required certificate alongwith his

application and therefore, application of petitioner no.2 was not considered. The result of the petitioner no.2 was liable to be cancelled and had been cancelled accordingly. It is further stated that as per rule and policy, the select list of 53 persons against 46 vacancies for general category was prepared by the respondent no.2-Board. It is further stated that petitioner nos.1, 3 and 4 have secured 118, 117 and 118 marks respectively at the said examination. Thus, the said petitioners having obtained less than 122 marks which were qualifying marks, were not selected.

5. Based on the aforesaid contentions raised in the affidavit in reply, this Court has passed an order on 26.03.1990. The learned advocate appearing for the petitioner has not pressed for the petition for petitioner nos.1, 3 and 4. So far as petitioner no.2 is concerned, the matter was admitted and rule was issued. The court has observed that it is the say of the petitioner that in pursuance of the advertisement issued by the Gujarat Panchayat Services Selection Board for the post of Block

Extension Educator, the petitioner submitted the application on 20th June, 1988. He appeared in the examination which was held in August, 1989. The result of the petitioner was not declared and therefore, the petitioner has filed this SCA. In the affidavit in reply, it is the say of the respondent no.2 Board that as per the instruction 3 & 4, all the candidates shall have to attach all the relevant certificates and documents duly certified to be true copies with the application form and only those applicants would be considered eligible for the post of Block Extension Educator whose applications are complete in all respects. As the petitioner no.2 has failed to submit the true copies of all the required certificates along with his application, he was not considered to be eligible for appointment and his result was liable to be cancelled and was cancelled accordingly. The court has further observed that as against this, it is the say of the petitioner that the petitioner had tendered his application form with all the necessary certified documents except one certified mark-sheet. Thereafter he had sent the

certified copy to the Board but the Board had not considered it. The Court has further observed that it was an admitted fact that if the petitioner has sent certified copy of the marksheet, the petitioner no.2 would have been declared as successful candidate. Taking into consideration these facts, the Court has ordered that respondent no.2 the Gujarat Panchayat Service Selection Board shall consider the case of the petitioner for declaration of his result after verifying the original certificates which would be produced by the petitioner before it on 28th March 1990 at 12=30 p.m. The respondent no.2 was directed to pass appropriate order after verifying the original certificates without insisting that as certified copy of one mark-sheet was not produced, his result was required to be cancelled. If the petitioner produces the original certificates and they are according to rules, then the result of the petitioner be declared within a week from the date of showing certificates to respondent no.2.

6. From the above interim relief, it appears that

the petitioner no.2 might have produced certificates and as per the direction given by this court in its order dated 26th March, 1990, the result of the petitioner might have been declared and since it is not the case of the respondent that he has got less than qualifying marks the petitioner might have been appointed and not challenged the same. The petition was originally filed by the learned advocate on behalf of petitioner, who was later on elevated to the bench of this High Court and despite issuance of notice, nobody appears on behalf of petitioner no.2.

7. The learned Asst. Government Pleader is not in a position to submit whether any decision has been taken pursuant to the direction given by this Court. Be that as it may, since the petition is of 1989 and more than 16 years have passed, the Court did not adjourn the hearing of this petition and proceeded on the footing that the grievance of the petitioner no.2 might have been fully redressed and hence, petitioner no.2 is not interested further in prosecuting the matter. Petition is therefore, disposed of for want of prosecution reserving

liberty to the petitioner to approach this Court in case of difficulty or if the need so arises in future.

8. Subject to the aforesaid observations, the petition is accordingly disposed of. Rule is discharged without any order as to costs.

(K.A.PUJ, J.)

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